IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4979 OF 2007

Subhash Shankar : Petitioner
(Orig.Defendant)

V/s.

Kaikhosrow Meherban Tirandazian & Anr. : Respondents
(Orig.Plaintiffs)

...

Mr.N.J.Patil i/b. Mr.Mohan Shetty and Mr.Sunil Waghmare for the petitioner.

Mr.D.B.Savant for the respondents.

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CORAM : S.A.BOBDE, J.

DATE : AUGUST 02, 2007.

P.C.

1. The trial Court has refused to delete the petitioner who has been joined by the respondents to the suit because he is the adopted son of the late tenant. The petitioner has challenged the order refusing to delete him.

2. According to Mr.Patil, the learned counsel for the petitioner, the petitioner ought to have been deleted because, according to him, though he is the adopted son of the deceased tenant, he lives in Gulbarga and the business

is being carried on in the premises by his two sons and, therefore, he ought not to have been joined as a party to the suit. Mr.Patil referred to paragraph 2 of the affidavit-in-reply to the respondents' application for injunction. In that paragraph, the petitioner has made the following statements:-

> "I say that I am not sub tenant of the Plaintiffs in respect of the Suit Premises and is not connected with the business of sale of books and Magazine in the Suit Premises."

And he has further stated:-

> "Ratna Shankar Devargudi expired on 23rd July 2006 at Gulbarga and presently my sons Shri Sanjay and Shankar is carrying on the business at the Suit Premises."

In my view, this statement was not sufficient to support the petitioner's prayer for being struck off as a defendant. The trial Court could have considered the petitioner's prayer for being deleted as a defendant only if he had entirely disassociated himself from the premises in question.

3. Mr.Patil, the learned counsel for the petitioner, however, states that the petitioner is willing to make such a statement. In the circumstances, I see no reason to set aside the impugned order. However, if the petitioner makes a statement that he has not inherited the tenancy in respect of the suit premises and that he has no right, title or interest in the suit premises and, therefore, does not wish to contest the suit, the trial Court shall consider the petitioner's application for deletion afresh and pass appropriate orders.

4. The petition stands disposed of accordingly.

S.A. BOBDE, J.